IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11319 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISHWARBHAI L PATEL - Petitioner(s)
Versus
GOVT. OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR JD AJMERA for Petitioner(s) : 1,
MR HUKUM SINGH AGP for Respondent(s) : 1 - 2.
MRS SANGEETA PAHWA FOR Mr PM THAKKAR for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/03/2007

ORAL JUDGMENT

1. Mr.J.D.Ajmera, learned counsel for the petitioner, Mr.Hukum Singh, learned Assistant Government Pleader for the State and Mrs.Sangeeta Pahwa, learned counsel

for the respondent No.3.

2. By this writ application, the petitioner, purchaser of the property from the respondent No.3, seeks to challenge correctness, validity and propriety of the order dtd.12/4/1993 passed by the Deputy Collector, Dhrangadhra and order dtd.30/12/1993 passed by the Deputy Secretary (Appeals), Revenue Department, whereunder, the authorities have held that in view of breach of Sec.8 of Fragmentation and Consolidation of Holdings Act, 1947, the transaction in dispute was to be annulled and the property was to be restored in favour of the respondent No.3.

3. Short facts necessary for disposal of the present writ application are that the respondent No.3 – Mohanbhai Lakhmanbhai Patel got a sale deed executed in his favour on 17/6/1974 pertaining to 3 Acres and 1/2 Guntha of Survey No.554 from one Dalpatbhai Bhaudarsinh. Thereafter, on 8/6/1976, a rectification document was executed to show that in fact, the intention of the parties was to sell Survey No.553/1, admeasuring 3 Acres and 8 Gunthas. It also appears that on 29/1/1977, the said Mohanbhai - respondent No.3 further purchased 2 Acres and 26 Gunthas from the erstwhile owner Zaverbhai

Kalubhai and now, in view of the said two sale deeds, he became owner of 5 Acres and 34 Gunthas land of Survey No.553/1. On 25/3/1976, the said Mohanbhai - respondent No.3 sold his entire holding of 5 Acres and 34 Gunthas of Survey No.553/1 to the petitioner for a consideration of Rs.14,000=00. Thereafter, certain revenue entries etc. were made and according to the petitioner, he spent a fortune to develop the land, make the land fertile and for sinking a Tube-well and Submersible Pump and Pipeline. It appears that on 1/1/1981, Zaverbhai Kalubhai – erstwhile owner of Survey No.553/1, again made a rectification document in favour of the respondent No.3 that due to some mistake, the area sold to the respondent No.3, was shown as 2 Acres and 26 Gunthas, while, in fact, the sale was of 3 Acres and 2 Gunthas.

4. It appears that somewhere in the year 1988, the Deputy Collector, Dhrangadhra in Fragmentation Case No.23 of 1988-89, issued a notice to the petitioner to show cause as to why the transaction be not held to be bad in view of breach of sec.8 of the Act. He also observed that out of total area of 6 Acres, the petitioner purchased only 5 Acres and 34 Gunthas, therefore, the remaining area of 16 Gunthas became a fragment. The petitioner filed his

show cause, however, vide order dtd.12/4/1993 in the above case, the Deputy Collector held that there was breach of sec.8 of the Act and accordingly, annulled the transaction, imposed a fine of Rs.100=00 on the respondent No.3, directed dispossession of the petitioner and ordered restoration of the possession in favour of the respondent No.3. As the revision proved futile, the petitioner is before this court.

5. Mr.Ajmera, learned counsel for the petitioner submits that on 25/3/1977, when the respondent No.3 sold the property in favour of the petitioner, undisputedly he was a registered owner and held legal title on an area admeasuring 5 Acres and 34 Gunthas of Survey No.553/1. According to him, if the respondent No.3 sold the entire holding in favour of the petitioner, then, there was no violation of sec.8 of the Act. His further submission is that the respondent No.3 became a registered owner and title holder for the rest of 16 Gunthas on 1/1/1981, when the erstwhile owner Zaverbhai Kalubhai executed rectification document. His submission is that if the respondent No.3 became the owner of the property under the registered rectification document in the year 1981, then, he could not have sold the said 16 Gunthas in favour of the

petitioner in the year 1977. According to him, in view of sale of the entire land as held and possessed by the respondent No.3, if the document was executed and the property was transferred, neither fragmentation came into being nor there was any breach of sec.8 of the Act.

6. Mrs.Pahwa, learned counsel for the respondent No.3 submitted that the respondent No.3 sold 5 Acres and 34 Gunthas land only and the rest of 16 Gunthas which came to the title of the respondent No.3 under the rectification deed dtd.1/1/1981, was never sold to the petitioner. According to her submission, whatever the registered documents were conveying in favour of the respondent No.3 was conveyed by the respondent No.3 in favour of the petitioner.

7. Mr.Hukum Singh, learned Assistant Government Pleader for the State submits that if the intention of Zaverbhai Kalubhai was to sell 3 Acres and 2 Gunthas in favour of the respondent No.3 and for the said purpose, he had executed the rectification document on 1/1/1981, then the said rectification would relate back to 29/1/1977 when the sale in favour of the respondent No.3 took place. According to him, if the respondent No.3 became the owner of 5 Acres and 34 Gunthas only out of 6 Acres,

then, the transaction would lead to a fragmentation.

8. In the opinion of this Court, the points for determination have not been properly appreciated by the subordinate authorities. In fact, they have proceeded on the assumption that on 25/3/1977, respondent No.3 became owner of 6 Acres and if he had sold 5 Acres and 34 Gunthas only, then the transaction was leading to a fragmentation. The authorities have not appreciated that in a case, where everybody understood that the respondent No.3 was owner of 5 Acres and 34 Gunthas only and was selling the entire property, then whether there would be breach of sec.8 of the Act. It would appear from the conduct of the respondent No.3 that he transferred his entire holding which came to his ownership under the earlier sale deed.

9. So far as the question of 16 Gunthas is concerned, I must observe that the title in relation to the said land came in favour of the respondent No.3 on execution of the rectification deed on 1/1/1981 and not prior thereto.

10. As the consideration of these facts and the legal position had material bearing on the final decision, I must hold that non-consideration of these aspects of the matter have led to an illegality.

11.The orders passed by the Collector and confirmed by the Dy.Secretary are hereby quashed. The petitioner and the respondent No.3 shall appear before the said Deputy Collector on 16/4/2007 with a copy of this order enabling the Deputy Collector to know as to what he has to do and that he is required to pass a fresh order in accordance with law and observations made by this Court.

12.The petition is allowed to the extent indicated above. Rule is made absolute accordingly. No costs.

(R.S. GARG, J.)

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